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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,307	11/28/2001	Paul Tasses	205,306	1085

7590 03/30/2004

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EXAMINER	
WEINSTEIN, STEVEN L	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No.	Applicant(s)	
	09/980,307	TASSES, PAUL	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 October 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2 and 3* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2 and 3* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2 and 3 are rejected under 35 U.S.C. 112, first paragraph for containing New Matter. The newly recited phrase that the second surface portion of the meal conforms to the size and shape of the first surface portion of the tray appears to be New Matter. The specification, as originally filed, does not appear to necessarily and inherently support this recitation. Also, it is not seen that the specification supports that the meal is in an "upright" ready to eat fashion in the tray and an "upright" ready to eat fashion in the serving dish. The drawings, and specifically figure 2, only shows the food in the tray. The drawings do not show how the food is transferred from the tray to the serving plate or show the food in the serving plate. Also, it is not seen that the phrase that a particular surface (i.e. the second surface) has its size and shape preserved.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGonigle (4,574,174) in view of Korsten (6,447,825), Waldburger (4,328,254), Nissley (3,610,458), Ceage (3,244,537) and Cease (GB, 172377) further in view of Bibby (GB2,186,475) and applicant's admission of the prior art, further in view of Standerwick

et al(4,839,180), Swanson(3,911,156), Boiron(FR2260300), Wright(6488973) and Plastics Engineering(12/86, p.11).

In regard to claim 2, McGonigle discloses providing a carrier tray (12) for a meal, the carrier tray including a first surface portion (i.e. the bottom surface) having a size and shape for receiving the meal, introducing the meal into the carrier tray so that a second surface of the meal conforms to the size and shape of the first surface portion and subjecting the meal to conditions that inhibit microorganism growth and contamination of the meal, the meal consisting of one or more foods that are introduced into the carrier tray at desired positions, the meal preselected in the carrier tray in an upright ready to eat fashion (since each food meal or portion is homogenous), freezing the meal in the carrier tray that enables the meal to be cold stored as a frozen meal until the meal is ready to be served, the size and shape of the second surface of the meal thereby being preserved, providing a serving dish (34) for the carrier tray wherein the serving dish includes a third surface (that is its bottom surface) of a size and shape (i.e. flat) which corresponds substantially to that of the first surface portion of the tray, removing the frozen meal fro the tray and transferring it into the dish so that a surface of the meal fits flushly against the third surface portion of the dish, the meal being presented in the dish in an upright ready to eat fashion (either surface of the dish of McGonigle would be considered upright since it is homogenous) such that the look from the tray would be maintained and heating or thawing the meal in the dish for serving and consumption. Korstan, Waldburger Nissley, Cease ('537) and Cease (GB '377) are

all relied on as further evidence of providing frozen food on a tray and avoiding an accompanying serving dish to transfer the food from tray to the dish.

Claim 2 apparently differs from McGonigle as further evidenced by Korsten, Waldburger etc. in the recitation that the second surface of the food which conformed to the size and shape of the first surface portion of the tray fits flushly against the third surface of the dish. This appears to recite that the frozen food product has not been inverted or its orientation changed relative to both tray and dish. As evidenced by Bibby, applicant is not the first to freeze a food product in a tray and then remove the frozen food stuff from the tray and place the frozen foodstuff in another container (albeit, an edible one) without inverting or changing the orientation of the food from one receptacle to the other. Applicant's admission of the prior art found on page 2 of the specification admits that meals have been transferred from commercial containes to serving receptacles, apparently without inversion, but not without difficulty. Indeed, it is notoriously old to slide leftover food from ones plate into a take home receptacle or slide omlettes from a pan onto a plate. Thus, to transfer foods from one surface to another without inversion is well established. The difficulty has been if the food is not frozen so that it is capable of changing shape or the surfaces are not commensurate in size or shape. However, the art taken as a whole teaches transferring foods in frozen condition and receptacles shaped for the food. To modify McGonigle and transfer the frozen food without inversion would therefore have been obvious in view of the art taken as a whole, Standerwick et al, Swanson, Boiron, Wright, and Plastics Engineering are relied on as

further evidence of transferring and manipulating foods while frozen. In regard to claim 2, McGonigle discloses a3 flexible plastic tray (col. 4, line 9).

All of applicants remarks filed 10/20/03 have been fully and carefully considered but are seen to be moot in view of the new grounds of rejection necessitated by the amendment.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday thru Friday from 6:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Weinstein/LR
March 18, 2004

STEVE WEINSTEIN
PRIMARY EXAMINER 1761
3/25/04